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SUBJECT: HONG KONG VIEWS ON PRC LEGAL REFORM (C-AL7-00894)

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[1](#)B. SECSTATE 110828
[1](#)C. GUANGZHOU 0789
[1](#)D. GUANGZHOU 0806
[1](#)E. HONG KONG 01589
[1](#)F. BEIJING 01103

Classified By: Acting E/P Chief Craig Reilly; Reasons 1.4 (b,d)

[1](#)1. (C) Summary: Contacts and cooperative arrangements between Hong Kong law schools, academics, and executive and judiciary branch officials and their mainland counterparts have accelerated in recent years. The Closer Economic Partnership Arrangement (CEPA) has provided a similar boost for Hong Kong law firms interested in mainland business. An ongoing mainland research project by the Chinese University of Hong Kong is collecting detailed information on the PRC criminal court system and procedures; one early but unsurprising finding is that defense lawyers do not play major roles in criminal trials. While a few Hong Kong contacts believe the Chinese judicial system is increasingly open, most question the extent to which mainland judges, lawyers, and officials have benefited from Hong Kong training or experience. Several leading Hong Kong legal figures believe "rule of law" in the mainland will remain largely an empty slogan until full judicial independence is realized. Chairman Albert Ho of the Human Rights Lawyers Concern Group opined that meaningful implementation of rule of law would be "the only way President Hu Jintao can keep his promise of establishing a truly harmonious society." (Note: This cable is the second of two prepared by the visiting Embassy Beijing Resident Legal Advisor and E/P Section's summer intern, with assistance from E/P officers. The first cable (ref a) discussed rule of law in Hong Kong.) End Summary.

Years of Cross-Border Legal Relations

[1](#)2. (SBU) Professional exchanges between the Hong Kong and mainland legal sectors began long before the 1997 handover. Over the past two decades, Hong Kong academic institutions, private law firms, and organizations such as the Law Society of Hong Kong have created venues for interaction between Hong Kong and mainland lawyers, judges, and legal academics, in part to support the "one country, two systems" principle and in part to support and influence legal reform in the PRC. The law departments of Hong Kong University and Chinese University of Hong Kong have sponsored research on Hong Kong's legal system by mainland scholars. The universities as well as the Hong Kong Law Society also have conducted legal seminars and financed training courses on the Hong Kong judicial system for mainland legal personnel. The Law

Society has greatly increased its communication with the All China Lawyers Association, mainly in the form of delegation visits, conferences, and moot court performances. The Society has established cooperative arrangements with 28 provincial and municipal counterparts in the mainland, mostly focused on commercial and financial law. Their programs have included "road shows" on joint ventures, arbitration, wealth management, taxation, and establishment of offices in China.

13. (SBU) Hong Kong law firms also have gained greater access to the mainland through the Closer Economic Partnership Arrangement (CEPA) between Hong Kong and the PRC. In April 2006, the Guangdong Province Department of Justice approved the first local partnership in Guangzhou between Hong Kong and mainland law firms. The signing of CEPA Phase IV in June 2007 furthered the development of a Hong Kong-mainland "hybrid legal system" by removing the territorial restriction on Hong Kong firms entering into associations with a mainland firm. Each Hong Kong legal representative office on the mainland now can form a partnership with one domestic law firm in the same province or municipality. At present, there are 71 Hong Kong law firm representative offices in the mainland, and six mainland law firms have opened branches in Hong Kong.

Criminal Law: Fewer Exchanges

14. (C) In criminal law, however, Law Society Criminal Committee head Stephen Hung said opportunities for exchange are much more limited, primarily because the differences between the two legal systems are too great. In actual criminal cases, Hong Kong criminal defense solicitors often are asked to assist when Hong Kong residents are detained in

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the mainland for debt disputes, are in custody for various reasons, or are seeking general legal advice on criminal matters. Mainland lawyers who have visited Hong Kong and attended its court procedures generally remark that the Hong Kong criminal justice system is inefficient.

15. (C) A five-year research project has collected extensive information and empirical data on the PRC criminal justice system and procedures. Professor Michael McConville, Director of the recently established School of Law at the Chinese University in Hong Kong, has formed partnerships with numerous mainland universities and legal scholars. He has obtained relatively unrestricted access - an unusual privilege -- to courts in 13 mainland districts. McConville's researchers have attended 220 trials and reviewed 1,444 case files ranging from minor infractions to death penalty cases. McConville plans to deliver a published report to the PRC Ministry of Justice before presenting it to the United Nations by the spring of 2008. He said his general sense thus far is that defense lawyers do not play major roles in the PRC's criminal justice system. Their only realistic opportunities to affect the ultimate outcomes are: (1) the formal transmittal of the case from the Public Security Bureau to the Procuracy; (2) the prosecution's formal request for additional investigation after the formal charge; (3) the prosecution's request for a formal opinion from the court to dismiss or transfer the case to administrative proceedings.

PRC-Taiwan: More in Common?

16. (C) Professor Albert Chen of Hong Kong University believes the mainland has more interaction on rule of law issues with Taiwan than Hong Kong, probably due to the common use of Mandarin and the civil-law nature of the PRC and Taiwan legal systems. The mainland is not as interested in Taiwan's developing democracy, Chen said, because it has fostered independence-minded politicians. For the same reason, the mainland is suspicious of Hong Kong's political parties that

advocate greater democracy in the region.

PRC Rule of Law: Progress or Empty Slogan?

17. (C) At a July seminar sponsored by the China Human Rights Lawyers Concern Group (a Hong Kong based NGO), views on the development of rule of law in China were generally positive. Barrister Cheung Yiu-Leung believes the Chinese judiciary is "opening up." Judges in some major cities regularly attend training courses conducted by the National Judges' College, where Cheung has been invited to speak. He was impressed by the "frank, open, and vibrant dialogue; with no apparent pressure, no taboo, and no defined limit of discussion topics."

18. (C) Cheung's experience, however, is not typical. Many Hong Kong lawyers and scholars are less optimistic and question the extent to which mainlanders have benefited from legal education and interactions with Hong Kong. Various sources told us they see "very little substance" generated from the delegation visits, conferences, vocational training, mock trials, etc. According to Hong Kong solicitor Kevin Steel, most mainland lawyers who frequent Hong Kong also are engaged in non-legal businesses and are more interested in Hong Kong's economic development and commercial laws and regulations.

19. (C) Several contacts opined that at present "rule of law" in the mainland will remain largely an empty slogan until full judicial independence is realized. According to Court of Final Appeal Justice Bokhary, who has extensive contacts with PRC legal scholars, Chinese courts operate more as a government bureau than an independent branch of government. Similarly, law professor Albert Chen of Hong Kong University believes that "vertical structuring" of the courts, whereby the Communist Party would no longer exercise power over courts, judges, and lawyers, would be the only truly effective reform. Department of Justice government counsel Wayne Walsh told us that the difficulty for Hong Kong residents to receive a fair trial in mainland China is one of the main impediments to an extradition agreement between Hong Kong and the mainland.

110. (C) Legislative Councilor Albert Ho, who is Chairman of the Human Rights Lawyers Concern Group and also Chairman of

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the Democratic Party, said Hong Kong NGOs have been working hard to provide various kinds of assistance to mainland human rights lawyers and legal activists, many of whom have been wrongfully prosecuted. He believes, however, that meaningful change can only occur if the central government takes "immediate steps" to implement the rule of law. Ho said this would be "the only way President Hu Jintao can keep his promise of establishing a truly harmonious society." Cunningham